

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2201

Introduced by Assembly Member Bradford

February 23, 2012

~~An act to amend Section 454.5 of the Public Utilities Code, relating to public utilities. An act to amend Section 51018.6 of the Government Code, relating to pipeline safety.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2201, as amended, Bradford. ~~Public utilities—electricity: procurement plans. Elder California Pipeline Safety Act of 1981: civil penalties.~~

Under existing law, the Elder California Pipeline Safety Act of 1981, the State Fire Marshal exercises safety regulatory jurisdiction over interstate pipelines used for the transportation of hazardous or highly volatile liquid substances, subject to federal law. Existing law provides that a violation, as determined by the State Fire Marshal, of the act, or any regulation adopted pursuant to the act, subjects a person to a civil penalty of not more than \$10,000 for each day that the violation persists, except that the maximum civil penalty is not permitted to exceed \$500,000 for any related series of violations. Existing law requires these penalties to be deposited into the Local Training Account in the California Hazardous Liquid Pipeline Safety Fund, available upon appropriation by the Legislature, as specified.

This bill would raise the civil penalties to \$100,000 for each day that a violation persists, and the maximum for any related series of violations to \$1,000,000.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. The Public Utilities Act requires the commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. The act requires that an electrical corporation's proposed procurement plan include certain elements, including a showing that the electrical corporation will first meet its unmet needs through prescribed means.~~

~~This bill would make a technical, nonsubstantive change to that showing provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 51018.6 of the Government Code is
2 amended to read:

3 51018.6. (a) The State Fire Marshal shall adopt regulations
4 for conducting enforcement proceedings pursuant to this section.
5 These regulations shall include provisions for the service and the
6 content of the notice of probable violation, response options,
7 conduct of hearings, issuing of the final order, amended final order,
8 and petitions for reconsideration and compromise of penalties, and
9 shall be consistent with the procedures specified in Sections
10 190.207 to 190.215, inclusive, and Section 190.227 of Title 49 of
11 the Code of Federal Regulations.

12 (b) If the State Fire Marshal determines, pursuant to the
13 regulations adopted pursuant to subdivision (a), that a person has
14 violated this chapter or any regulation adopted pursuant thereto,
15 that person is subject to a civil penalty of not more than ~~ten~~
16 ~~thousand dollars (\$10,000)~~ *one hundred thousand dollars*
17 *(\$100,000)* for each day that violation persists, except that the
18 maximum civil penalty shall not exceed ~~five hundred thousand~~
19 ~~dollars (\$500,000)~~ *one million dollars (\$1,000,000)* for any related
20 series of violations.

21 (c) The amount of the penalty shall be assessed by the State Fire
22 Marshal pursuant to the regulations adopted pursuant to subdivision
23 (a). In determining the amount of the penalty, the State Fire
24 Marshal shall consider the nature, circumstances, and gravity of

1 the violation and, with respect to the person found to have
2 committed the violation, the degree of culpability, any history of
3 prior violations, the effect on ability to continue to do business,
4 any good faith attempts to achieve compliance, ability to pay the
5 penalty, and any other matters as justice may require.

6 (d) A civil penalty assessed under subdivision (b) may be
7 recovered in an action brought by the Attorney General on behalf
8 of the state. Prior to referring the penalty action to the Attorney
9 General, the State Fire Marshal may accept an offer to compromise
10 the amount of the assessed penalty pursuant to the regulations
11 adopted pursuant to subdivision (a).

12 (e) The State Fire Marshal shall deposit all civil penalties
13 assessed pursuant to this section in the Local Training Account in
14 the California Hazardous Liquid Pipeline Safety Fund. The money
15 in the Local Training Account is available, upon appropriation by
16 the Legislature, to the State Fire Marshal, who shall use the money
17 for providing hazardous liquid fire suppression training to local
18 fire departments.

19 ~~SECTION 1. Section 454.5 of the Public Utilities Code is~~
20 ~~amended to read:~~

21 ~~454.5. (a) The commission shall specify the allocation of~~
22 ~~electricity, including quantity, characteristics, and duration of~~
23 ~~electricity delivery, that the Department of Water Resources shall~~
24 ~~provide under its power purchase agreements to the customers of~~
25 ~~each electrical corporation, which shall be reflected in the electrical~~
26 ~~corporation's proposed procurement plan. Each electrical~~
27 ~~corporation shall file a proposed procurement plan with the~~
28 ~~commission not later than 60 days after the commission specifies~~
29 ~~the allocation of electricity. The proposed procurement plan shall~~
30 ~~specify the date that the electrical corporation intends to resume~~
31 ~~procurement of electricity for its retail customers, consistent with~~
32 ~~its obligation to serve. After the commission's adoption of a~~
33 ~~procurement plan, the commission shall allow not less than 60~~
34 ~~days before the electrical corporation resumes procurement~~
35 ~~pursuant to this section.~~

36 ~~(b) An electrical corporation's proposed procurement plan shall~~
37 ~~include, but not be limited to, all of the following:~~

38 ~~(1) An assessment of the price risk associated with the electrical~~
39 ~~corporation's portfolio, including any utility-retained generation,~~
40 ~~existing power purchase and exchange contracts, and proposed~~

1 ~~contracts or purchases under which an electrical corporation will~~
2 ~~procure electricity, electricity demand reductions, and~~
3 ~~electricity-related products and the remaining open position to be~~
4 ~~served by spot market transactions.~~

5 ~~(2) A definition of each electricity product, electricity-related~~
6 ~~product, and procurement-related financial product, including~~
7 ~~support and justification for the product type and amount to be~~
8 ~~procured under the plan.~~

9 ~~(3) The duration of the plan.~~

10 ~~(4) The duration, timing, and range of quantities of each product~~
11 ~~to be procured.~~

12 ~~(5) A competitive procurement process under which the~~
13 ~~electrical corporation may request bids for procurement-related~~
14 ~~services, including the format and criteria of that procurement~~
15 ~~process.~~

16 ~~(6) An incentive mechanism, if any incentive mechanism is~~
17 ~~proposed, including the type of transactions to be covered by that~~
18 ~~mechanism, their respective procurement benchmarks, and other~~
19 ~~parameters needed to determine the sharing of risks and benefits.~~

20 ~~(7) The upfront standards and criteria by which the acceptability~~
21 ~~and eligibility for rate recovery of a proposed procurement~~
22 ~~transaction will be known by the electrical corporation prior to~~
23 ~~execution of the transaction. This shall include an expedited~~
24 ~~approval process for the commission's review of proposed contracts~~
25 ~~and subsequent approval or rejection thereof. The electrical~~
26 ~~corporation shall propose alternative procurement choices in the~~
27 ~~event a contract is rejected.~~

28 ~~(8) Procedures for updating the procurement plan.~~

29 ~~(9) A showing that the procurement plan will achieve all of the~~
30 ~~following:~~

31 ~~(A) The electrical corporation, in order to fulfill its unmet~~
32 ~~resource needs, shall procure resources from eligible renewable~~
33 ~~energy resources in an amount sufficient to meet its procurement~~
34 ~~requirements pursuant to the California Renewables Portfolio~~
35 ~~Standard Program (Article 16 (commencing with Section 399.11)~~
36 ~~of Chapter 2.3).~~

37 ~~(B) The electrical corporation shall create or maintain a~~
38 ~~diversified procurement portfolio consisting of both short-term~~
39 ~~and long-term electricity and electricity-related and demand~~
40 ~~reduction products.~~

1 ~~(C) The electrical corporation shall first meet its unmet resource~~
2 ~~needs through all available energy efficiency and demand reduction~~
3 ~~resources that are cost effective, reliable, and feasible.~~

4 ~~(10) The electrical corporation's risk management policy,~~
5 ~~strategy, and practices, including specific measures of price~~
6 ~~stability.~~

7 ~~(11) A plan to achieve appropriate increases in diversity of~~
8 ~~ownership and diversity of fuel supply of nonutility electrical~~
9 ~~generation.~~

10 ~~(12) A mechanism for recovery of reasonable administrative~~
11 ~~costs related to procurement in the generation component of rates.~~

12 ~~(e) The commission shall review and accept, modify, or reject~~
13 ~~each electrical corporation's procurement plan. The commission's~~
14 ~~review shall consider each electrical corporation's individual~~
15 ~~procurement situation, and shall give strong consideration to that~~
16 ~~situation in determining which one or more of the features set forth~~
17 ~~in this subdivision shall apply to that electrical corporation. A~~
18 ~~procurement plan approved by the commission shall contain one~~
19 ~~or more of the following features, provided that the commission~~
20 ~~may not approve a feature or mechanism for an electrical~~
21 ~~corporation if it finds that the feature or mechanism would impair~~
22 ~~the restoration of an electrical corporation's creditworthiness or~~
23 ~~would lead to a deterioration of an electrical corporation's~~
24 ~~creditworthiness.~~

25 ~~(1) A competitive procurement process under which the~~
26 ~~electrical corporation may request bids for procurement-related~~
27 ~~services. The commission shall specify the format of that~~
28 ~~procurement process, as well as criteria to ensure that the auction~~
29 ~~process is open and adequately subscribed. Any purchases made~~
30 ~~in compliance with the commission-authorized process shall be~~
31 ~~recovered in the generation component of rates.~~

32 ~~(2) An incentive mechanism that establishes a procurement~~
33 ~~benchmark or benchmarks and authorizes the electrical corporation~~
34 ~~to procure from the market, subject to comparing the electrical~~
35 ~~corporation's performance to the commission-authorized~~
36 ~~benchmark or benchmarks. The incentive mechanism shall be~~
37 ~~clear, achievable, and contain quantifiable objectives and standards.~~
38 ~~The incentive mechanism shall contain balanced risk and reward~~
39 ~~incentives that limit the risk and reward of an electrical corporation.~~

~~(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.~~

~~(d) A procurement plan approved by the commission shall accomplish each of the following objectives:~~

~~(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.~~

~~(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and ensure that each contract was administered in accordance with the terms of the contract, and contract disputes that may arise are reasonably resolved.~~

~~(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of~~

1 ~~Water Resources. The commission shall determine the schedule~~
2 ~~for amortizing the overcollection or undercollection in the~~
3 ~~balancing account to ensure that the 5 percent threshold is not~~
4 ~~exceeded. After January 1, 2006, this adjustment shall occur when~~
5 ~~deemed appropriate by the commission consistent with the~~
6 ~~objectives of this section.~~

7 ~~(4) Moderate the price risk associated with serving its retail~~
8 ~~customers, including the price risk embedded in its long-term~~
9 ~~supply contracts, by authorizing an electrical corporation to enter~~
10 ~~into financial and other electricity-related product contracts.~~

11 ~~(5) Provide for just and reasonable rates, with an appropriate~~
12 ~~balancing of price stability and price level in the electrical~~
13 ~~corporation's procurement plan.~~

14 ~~(e) The commission shall provide for the periodic review and~~
15 ~~prospective modification of an electrical corporation's procurement~~
16 ~~plan.~~

17 ~~(f) The commission may engage an independent consultant or~~
18 ~~advisory service to evaluate risk management and strategy. The~~
19 ~~reasonable costs of any consultant or advisory service is a~~
20 ~~reimbursable expense and eligible for funding pursuant to Section~~
21 ~~631.~~

22 ~~(g) The commission shall adopt appropriate procedures to ensure~~
23 ~~the confidentiality of any market sensitive information submitted~~
24 ~~in an electrical corporation's proposed procurement plan or~~
25 ~~resulting from or related to its approved procurement plan,~~
26 ~~including, but not limited to, proposed or executed power purchase~~
27 ~~agreements, data request responses, or consultant reports, or any~~
28 ~~combination, provided that the Office of Ratepayer Advocates and~~
29 ~~other consumer groups that are nonmarket participants shall be~~
30 ~~provided access to this information under confidentiality~~
31 ~~procedures authorized by the commission.~~

32 ~~(h) Nothing in this section alters, modifies, or amends the~~
33 ~~commission's oversight of affiliate transactions under its rules and~~
34 ~~decisions or the commission's existing authority to investigate and~~
35 ~~penalize an electrical corporation's alleged fraudulent activities,~~
36 ~~or to disallow costs incurred as a result of gross incompetence,~~
37 ~~fraud, abuse, or similar grounds. Nothing in this section expands,~~
38 ~~modifies, or limits the State Energy Resources Conservation and~~
39 ~~Development Commission's existing authority and responsibilities~~

1 as set forth in Sections 25216, 25216.5, and 25323 of the Public
2 Resources Code.

3 (i) An electrical corporation that serves less than 500,000 electric
4 retail customers within the state may file with the commission a
5 request for exemption from this section, which the commission
6 shall grant upon a showing of good cause.

7 (j) (1) Prior to its approval pursuant to Section 851 of any
8 divestiture of generation assets owned by an electrical corporation
9 on or after the date of enactment of the act adding this section, the
10 commission shall determine the impact of the proposed divestiture
11 on the electrical corporation's procurement rates and shall approve
12 a divestiture only to the extent it finds, taking into account the
13 effect of the divestiture on procurement rates, that the divestiture
14 is in the public interest and will result in net ratepayer benefits.

15 (2) Any electrical corporation's procurement necessitated as a
16 result of the divestiture of generation assets on or after the effective
17 date of the act adding this subdivision shall be subject to the
18 mechanisms and procedures set forth in this section only if its
19 actual cost is less than the recent historical cost of the divested
20 generation assets.

21 (3) Notwithstanding paragraph (2), the commission may deem
22 proposed procurement eligible to use the procedures in this section
23 upon its approval of asset divestiture pursuant to Section 851.